

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2893**

As Agreed to March 31, 2006

**Brief\***

HB 2893 would require that a health care provider for offenders in custody be paid the lesser of the actual amount billed or the Medicaid rate for health care service provided. Contract agreements could be entered into regarding health care services for a rate different than the medicaid rate. The custodial agencies, under agreement with the Kansas Health Policy Authority (KHPA), would be responsible for the services provided and to communicate that determination along with the remittance advice and payment for services.

The term health care provider would be expanded to include a person licensed by the Behavioral Sciences Regulatory Board. "Medicaid rate" would be defined to mean the terms, conditions and amounts a health care provider would be paid for health care services rendered pursuant to a contract or provider agreement with the KHPA.

The bill would expand a crime dealing with medicaid fraud to clarify that the prohibition against receiving illegal bribes, kickbacks and rebates applies to providers as well as recipients; would prohibit agreements to divide or share medicaid funds illegally obtained; would prohibit tracking or selling medicaid numbers for money or other remuneration and the selling or exchange for value goods purchased or provided; and would expand provisions of the crime to cover entities as well as persons.

Further, the bill would require every pharmacy claim form, on or after May 23, 2007, include the prescriber's unique identification number and require medicaid consumers provide, in addition to the monthly medicaid identification card, a current Kansas driver's license or state issued identification card each time care is received.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

The penalty for the crime of misuse of public funds also would be amended to reflect a graduated penalty structure based on the amount of money involved; i.e., \$100,000 or more would be a severity level 5 nonperson felony; \$25,000 but less than \$100,000 would be a level 7 nonperson felony; \$1,000 but less than \$25,000 would be a level 9 nonperson felony; and less than \$1,000 would be a class A misdemeanor. Further, a person convicted of misuse of public funds would be prohibited from holding any official position.

In addition, the bill would create the new crime of obstruction of a Medicaid fraud investigation and would expand the Kansas Standard Asset Seizure and Forfeiture Act to cover the crime of Medicaid fraud.

The crime of obstruction of a Medicaid fraud investigation would include: falsifying, concealing, or covering up a material fact or making or causing to be made any materially false writing or document. The new crime is made a level 9, nonperson felony.

The bill would amend the asset forfeiture law to expand and clarify property derived from or realized through any proceeds derived from any offense covered. The bill would amend the priority rules for proceeds of forfeitures to list the first priority for proceeds of forfeitures related to Medicaid fraud as the State Medicaid Fraud Reimbursement Fund. The bill authorizes the Attorney General to collect attorneys' fees in these cases (not to exceed 15 percent in uncontested cases and 20 percent in contested cases) and to place these attorneys' fees into a Medicaid fraud prosecution revolving fund to be used for investigation and prosecutions of these fraud cases. Any moneys not otherwise allocated shall be placed in the Attorney General's Medicaid Fraud Forfeiture Fund to be used for investigations or prosecutions of such fraud.

### **Conference Committee Action**

The Conference Committee agreed on the version of the bill that was amended by the House Committee and added the following:

- Insertion of a provision regarding obstruction of a Medicaid fraud investigation, and a provision regarding a pharmacy claim form. These provisions are from SB 451;
- Expansion of the crime dealing with misuse of public funds. This provision is from SB 326; and

- Creation of the new crime of obstruction of a Medicaid fraud investigation and expansion of the Kansas Standard Asset Seizure and Forfeiture Act. These provisions are from SB 342.

## **Background**

Jeff Bottenberg on behalf of the Kansas Sheriff's Association; Thomas Williams of the Allen County Sheriff's Office; Elizabeth Gillespie on behalf of the Shawnee County Commissioners and the Kansas Jail Association; and Randall Allen with the Kansas Association of Counties expressed support for the bill. Jerry Slaughter, Kansas Medical Society; Fred Lucky with the Kansas Hospital Association; Chip Wheelen with the Kansas Association of Osteopathic Medicine addressed concerns with the bill. Mark Miller with Memorial Hospital in Abilene expressed support for the bill with amendments. Informational material was provided by Eugene Horton, the Crawford County Sheriff.

The Senate Committee of the Whole made technical and clarifying amendments.

The fiscal note on the original bill indicates the bill would require the KHPA to make Medicaid payment rates available to law enforcement and county correctional agencies. The KHPA would need to make Medicaid pricing available to law enforcement and county correction agencies so they could estimate their costs. The KHPA would produce and distribute a compact disc to agencies at a cost of \$50 per disc. The KHPA estimates it would need \$5,000 from the State General Fund in FY 2007 to distribute the discs to 100 agencies (\$50 X 100). Furthermore, HB 2893 does not specify if the agency would process the claims. If the KHPA processes the claims, then the agency would need to perform system modifications to its Medicaid Management Information System. The agency estimates it would require between \$15,000 and \$20,000 from the State General Fund in FY 2007 for the system modifications. The cost to process each claim would be \$0.70; however, the agency does not have data to estimate the number of claims it would process.

According to the Kansas Association of Counties and the Highway Patrol, most health care providers do not discount charges for health care of incarcerated people. Therefore, the enactment of HB 2893 would save the counties and the Patrol money because the bill would decrease the amount of health care expenditures. However, the amount of savings cannot be estimated because there are not data

available. The Kansas League of Municipalities did not send a response, but it is reasonable to believe that the savings would be similar to that noted by Kansas Association of Counties and the Patrol.

**SB 451** was supported by Senators Huelskamp and Petersen and by the Medicaid Fraud and Abuse Division of the Kansas Attorney General's Office.

The Senate Committee amendments were clarifying in nature.

The fiscal note stated that under the bill, costs could increase for district courts and could cause an increase in prison admissions but estimates of the costs cannot be made.

**SB 326** was recommended by the 2005 Special Committee on Medicaid Reform.

Proponents included the Attorney General's Medicaid Fraud and Abuse Division, the Kansas Medical Society, the Kansas Hospital Association, Representative Sydney Carlin, and the Kansas Taxpayers Against Fraud.

The fiscal note states that the Attorney General estimates that \$129,285 would be needed from the State General Fund to finance 2.00 new FTE positions. Furthermore, if the Attorney General prosecutes the violations contained in SB 326 and the judgement is in favor of the state, then state revenues would increase as a result of civil penalties defined in the bill. However, there is not enough information to estimate the increase to state revenues.

The bill also would require the courts to hear the violations against SB 326 but the Judiciary has no information upon which to base an estimate of cases it would receive.

**SB 342** was supported by the Deputy Attorney General for the Medicaid Fraud and Abuse Division. The proponent said the bill would help in the investigation and prosecution of Medicaid fraud cases. The fiscal note was not available.

Medicaid issues